

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY PARIS IMMEDIATE

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TAGS: EAIR, FR

SUBJECT: CIVAIR: PAN AM CHANGE OF GAUGE

1. FOLLOWING IS TEXT OF NONPAPER WHICH EMBASSY IS
REQUESTED TO PRESENT TO NOEL MUSEUX, DEPUTY DIRECTOR OF
LEGAL AFFAIRS, MINISTRY OF FOREIGN AFFAIRS, ON MONDAY,
JUNE 5:

"AT THE US-FRANCE MEETING OF LEGAL EXPERTS ON JUNE 1 AND
2, THE US DELEGATION ADVANCED THE FOLLOWING ARGUMENTS
AMONG OTHERS:

"1. THE US-FRANCE AGREEMENT LIMITS THE RIGHT OF EITHER
PARTY TO CHANGE GAUGE IN THE TERRITORY OF THE OTHER, BUT--
IN ACCORDANCE WITH THE GENERAL PRINCIPLE OF NONREGULATION
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OF PRACTICES IN THIRD STATES--IMPOSES NO LIMITATIONS ON
CHANGE OF GAUGE IN THIRD COUNTRIES.

"2. THE US POSITION AND THE DISPUTED LONDON CHANGE OF
GAUGE ARE CONSISTENT WITH THE PURPOSE OF THE AGREEMENT,
WHICH IS TO PROVIDE AIR TRAVEL 'AT THE CHEAPEST RATES
CONSISTENT WITH SOUND ECONOMIC PRINCIPLES.' THE FRENCH

POSITION WOULD FRUSTRATE THIS PURPOSE, AND ALSO IGNORES THE FACT THAT THE SOLE HISTORICAL CONCERN ABOUT CHANGE OF

GAUGE OPERATIONS IS TO ENSURE CONFORMITY WITH CAPACITY PRINCIPLES. THE DISPUTED LONDON CHANGE OF GAUGE IS UNQUESTIONABLY CONSISTENT WITH CAPACITY PRINCIPLES, FOR PAN AM DOES NOT ENJOY LONDON-PARIS TRAFFIC RIGHTS AND THE CHANGE IS FROM A LARGER TO SMALLER AIRCRAFT ON THE OUTWARD JOURNEY AND VICE VERSA ON THE RETURN JOURNEY. OPERATIONAL CHANGES BY ONE PARTY'S CARRIERS WHICH DO NOT AFFECT FIFTH FREEDOM TRAFFIC DO NOT CONCERN THE OTHER PARTY.

"3. THE US POSITION IS CONFIRMED BY THE NEGOTIATING HISTORY OF THE AGREEMENT. THE AGREEMENT IS MODELED UPON THE US-UK BERMUDA AGREEMENT OF 1946, WHICH SIMILARLY REGULATES CHANGE OF GAUGE ONLY IN A PARTY'S TERRITORY. THE PARTIES CLEARLY UNDERSTOOD THAT CHANGES OF GAUGE IN THIRD COUNTRIES WERE THEREFORE UNREGULATED. IN THEIR BERMUDA-TYPE AGREEMENT, THE US AND FRANCE LIKEWISE ADOPTED THESE PRINCIPLES, MERELY SIMPLIFYING THE TEXT AND LIBERALIZING ITS PROVISIONS.

"4. THE US POSITION IS CONFIRMED BY LONG INTERNATIONAL PRACTICE, INCLUDING PRACTICE UNDER THE US-FRANCE AGREEMENT. CHANGE OF GAUGE WAS COMMON IN 1946 WHEN THE AGREEMENT.

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MENT WAS CONCLUDED AND REMAINS SO. US CARRIERS HAVE OPERATED SERVICES WITH CHANGES OF GAUGE AT NUMEROUS POINTS, INCLUDING THIRD-STATE INTERMEDIATE AND BEYOND POINTS ON AGREED ROUTES UNDER THE US-FRANCE AGREEMENT. MORE GENERALLY, THE INTERNATIONAL NETWORK OF BILATERAL AVIATION AGREEMENTS IS BASED UPON THE BERMUDA AGREEMENT WHICH PERMITS THIRD-STATE CHANGE-OF-GAUGE. IF FRANCE WERE CORRECT THAT UNDER EACH AGREEMENT THIRD-STATE CHANGES OF GAUGE WERE PROHIBITED, ALL CHANGES OF GAUGE WOULD BE UNIVERSALLY BARRED. FOR EXAMPLE, A CHANGE IN FRANCE PERMITTED BY FRANCE WOULD BE PROHIBITED BY THE AGREEMENTS OF ALL OTHER COUNTRIES ON THE AFFECTED ROUTE. THE RESULT IS ABSURD, DEMONSTRATING THE ERRONEOUSNESS OF THE FRENCH POSITION.

"5. FOR THESE REASONS AMONG OTHERS, THE FRENCH INTERFERENCE WITH PAN AM'S OPERATION IS A CLEAR BREACH OF THE US-FRANCE AGREEMENT. UNLESS THE BREACH IS ENDED, THE US MUST, AND IS ENTITLED TO, TAKE APPROPRIATE COUNTERMEASURES TO RESTORE THE EQUILIBRIUM ESTABLISHED BY THE AGREEMENT."

2. LEE MARKS, DEPUTY LEGAL ADVISER AND CHAIRMAN OF THE
US DELEGATION TO THE JUNE 1-2 LEGAL EXPERTS' TALKS, WILL
ARRIVE IN PARIS TUESDAY MORNING FOR OECD RESTRICTIVE

BUSINESS PRACTICE TALKS JUNE 7-9. IF MUSEUX REQUESTS A
MEETING, MARKS WILL BE AVAILABLE TUESDAY AFTERNOON.
PLEASE LEAVE A MESSAGE FOR HIM AT THE HOTEL D'ISLY,
ADVISING HIM WHETHER OR NOT A MEETING IS SCHEDULED. CHRISTOPHER

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